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OFFICE OF PETITIONS

In re Application of :
Carel J. L. Van Driel :
Application No. 10/780,473 :
Filed: February 17, 2004 : DECISION ON PETITION
Attorney Docket No. PHN 16-613A : UNDER 37 C.F.R. §1.181(A)
Title: COMMUNICATION NETWORK :
USING DIFFERENT TRANSMISSION :
PROPERTIES :

This is a decision on the petition pursuant to 37 C.F.R.
§1.181(a), filed on January 3, 2007.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the Notification of Non-Compliant Appeal Brief, mailed August 3, 2006, which set a period for reply of one month. No response was received, and no extensions of time were requested. Accordingly, the above-identified application became abandoned on September 4, 2006. A notice of abandonment was mailed on October 12, 2006.

RELEVANT PORTION OF THE C.F.R.

37 C.F.R. §1.8(b) sets forth, *in toto*:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the

proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

ANALYSIS

The showing in the present petition is not sufficient to withdraw the holding of abandonment. Petitioner has asserted that a response to this communication was submitted on September 5, 2006 (September 4, 2006 fell on a federal holiday). The electronic file has been reviewed, and the response which was purportedly submitted on September 5, 2006 has not been located.

Petitioner has submitted a copy of this response, and it is noted that it contains a certificate of facsimile transmission dated September 5, 2006. Certificate of facsimile transmission practice provides a mechanism by which Applicants may evince that a paper was timely submitted to the Office, in the event that the correspondence is not received.

Petitioner's submission has been reviewed: with the present petition, Petitioner has informed the Office of the previous mailing and provided an additional copy of the previously submitted correspondence. However, it is noted that the certificate of mailing was executed by one Moira Anderson, and it does not appear that Petitioner has included a statement from this individual. 37 C.F.R. §1.8(b)(3) requires the inclusion of a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission.

Petitioner has included a statement from Mark Woodall (it appears that Ms. Anderson is his administrative assistant), however it does not appear that he has firsthand knowledge of the relevant transmission - it is noted that Mr. Woodall has not set forth that he witnessed the sending of this communication. On renewed petition, Petitioner may wish to include a statement from Ms. Anderson.

CONCLUSION

Pursuant to the discussion above, the submission is incomplete. It follows that the present petition pursuant to 37 C.F.R. §1.181 must be DISMISSED.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.181." This is not a final agency action within the meaning of 5 U.S.C 704.

Alternatively, Petitioner may wish to consider filing a petition under 37 C.F.R. §§1.137(a) and/or (b).

Any subsequent petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail¹, hand-delivery², or facsimile³. If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225⁴. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

2 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

3 (571) 273-8300- please note this is a central facsimile number.

4 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.